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As per the Revised Competency-based Medical Education Curriculum (NMC)

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CHAPTER

2 Legal Procedure

COMPETENCIES

FM1.3: Describe legal competencies including Bharatiya Nagarik Suraksha Sanhita (BNSS), Bharatiya Nyaya Sanhitha, Bharatiya Sakshya Adhiniyam (BSA), Protection of Children from Sexual Offences Act (POCSO), Civil and Criminal cases, Inquest (Police inquest and Magistrate inquest), cognizable and non-cognizable offences.

FM1.4: Describe courts in India and their powers—Supreme Court, High Court, Sessions Court, Magistrate's Court, Labour Court, Family Court, Executive Magistrate Court and Juvenile Justice Board.

FM1.5: Describe court competencies including issue of summons, conduct money, types of witnesses, recording of evidence oath, affirmation, examination in chief, cross examination, re-examination and court questions, recording of evidence and conduct of doctor in witness box.

FM1.6: Describe offenses in court including perjury; court strictures vis-a-vis medical officer.

FM1.7: Describe Dying Declaration and Dying Deposition.

FM2.23: Crime scene investigation—Describe and discuss the objectives of crime scene visit, the duties and responsibilities of doctors on crime scene and the reconstruction of sequence of events after crime scene investigation.

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BHARATIYA NYAYA SANHITA (BNS), 2023 came into effect on July 1, 2024 and replaced INDIAN PENAL CODE, 1860 (IPC). It deals with substantive criminal law in India. It defines offences and prescribes punishments.

BHARATIYA NYAYA SURAKSHA SANHITA (BNSS), 2023 came into effect on July 1, 2024 and replaced CRIMINAL PROCEDURE CODE, 1973 (CrPC). It provides the mechanism for punishment of offences against the substantive criminal law. It deals with police duties in arresting offenders, dealing with absconders, in the production of documents, etc., and in investigating offences. It provides for different class of Courts and deals with actual procedure in trials, appeals, references, revisions and transfer of criminal cases.

BHARATIYA SAKSHYA ADHINIYAM (BSA), 2023 came into effect on July 1, 2024 and replaced INDIAN EVIDENCE ACT, 1872 (IEA). It deals with Law of Evidence, which applies to all judicial proceedings in any Court. It is common to both the criminal and civil procedures.

CIVIL LAW: It deals with disputes between two individuals or parties. The party bringing the action in a civil case is called **'plaintiff'**. The accused is called **'defendant'** in both criminal and civil cases.

CRIMINAL LAW: It deals with offences which are considered to be against the public interest, such as offences against the person, property, public safety, security of the State, etc. Here the **State is a party represented by public prosecutor**, and the accused is the other party.

Burden of proof differs (preponderance of probabilities in civil vs beyond reasonable doubt in criminal cases).

INQUEST: An inquest is an enquiry or investigation into the cause of death. It is conducted in cases of suicide, homicide, accidents, suspicious (unnatural) deaths and death due to anesthesia or during operation. Two types of inquests are held in India.

(1) POLICE INQUEST: According to section 194 BNSS (S.174 Cr.P.C.)**, the officer-in-charge of a police station (usually sub-inspector but not below the rank of head constable) conducts the inquest.** The police officer making the inquest is known as Investigating Officer (I.O.). When the officer-in-charge of a police station receives information

that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, deaths due to torture or ill-treatment, suspected medical negligence, or has died under circumstances raising a reasonable suspicion, that some other person has committed an offence, and unidentified or skeletonized bodies, **he immediately gives intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and proceeds to the place where the body of such deceased person is.** There, in the presence of two or more respectable persons *(panchas),* makes an investigation (**S. 195 BNSS**; S.175 Cr.P.C.). **He prepares a report of the apparent cause of death, describing wounds, fractures, bruises, and other marks of injury found on the body,** and stating in what manner, or by what weapon or instrument, such injuries appear to have been inflicted. The inquest report **(panchanama)** is then signed by the investigating police officer and by the ***panchas*** and shall be **forwarded to the District Magistrate or Sub-divisional Magistrate within 24 hours**. If no foul play is suspected, the dead body is handed over to the relatives for disposal. In cases of suspected foul play or doubt, the body is sent for postmortem examination with a requisition to the nearest civil surgeon or any qualified medical personnel appointed for this purpose by the State Government.

Private medical institutions can undertake medicolegal examination of the living including treatment, but autopsies can be conducted only with the permission of the State Government.

(2) MAGISTRATE'S INQUEST: This is conducted by a **District Magistrate, Sub-divisional Magistrate, or any other Executive Magistrate, especially empowered by the State Government or the District Magistrate, such as Collector, Deputy Collector or *Tahsildar*.**

It is done in cases of

(1) Dowry death

(2) In case of death of a woman within 7 years of marriage if
- **(a) she commits suicide**
- **(b) dies in any circumstance raising a reasonable suspicion that some other person committed an offence**
- **(c) any relative of the woman makes a request**
- **(d) any doubt regarding cause of death**

(3) Exhumation

(4) Death or disappearance of any person, or rape alleged to have been committed on any woman, while such person or woman is in the custody of the police or any others custody authorized by the court. Death in police custody has been omitted by Cr.P.C. Amendment Act, 2005.

According to section 196 BNSS (S.176 Cr.P.C.), in any case of death, a Magistrate may conduct an inquest instead of, or in addition to the police inquest.

OTHER TYPES OF INQUEST (NOT IN INDIA)

(1) CORONER'S INQUEST: This is a type of inquest done in the United Kingdom, some States in the United States of America and some other countries but not in India. Coroner conducts inquest in all unnatural and suspicious deaths. The doctor is summoned to his Court to give evidence at the inquest. Coroner's Court is a Court of enquiry, wherein Jurors are sworn in to give a true verdict according to the evidence. He has some judicial powers. Coroner's inquest was abolished in India since 1999.

(2) MEDICAL EXAMINER'S SYSTEM: This is a type of inquest done in most States in the United States of America, but not in India. A medical practitioner, known as Medical Examiner, is appointed to perform the functions of Coroner. He does not have any judicial functions similar to the Coroner. As the doctor visits the scene of crime and conducts the inquest, it is superior to Coroner's and police inquest.

(3) PROCURATOR FISCAL SYSTEM: This is a type of inquest practiced in Scotland.

JURY: Jury is a group of responsible, educated persons of good social position called "Jurors". Trial by jury has been abolished in India.

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COURTS OF LAW

Types: (1) Civil and (2) Criminal. **The criminal Courts in India are of four types:**

(1) **Supreme Court** is the highest judicial tribunal, and is located in New Delhi. It **has power of supervision over all Courts in India. It is purely an appellate Court in criminal cases.** The law declared by it is binding on all Courts **(Article 141 of Constitution of India)**.

(2) The **High Court** is usually located in the capital of every State and is highest tribunal for the State. **According to section 22 BNSS** (S.28, Cr.P.C.), it may try any offence and pass any sentence authorised by law. Judges of the High Court are appointed by the President of India.

The Supreme Court and High Courts act as Courts of appeal only in criminal cases and do not hold trial prima facie.

(3) **The sessions court** is usually located at the district headquarters. According to section 213 BNSS (S. 193, Cr.P.C.), it can only try cases which have been **committed to it by a Magistrate**. As per section 22 (2) and section 407 BNSS, it can **pass any sentence authorized by law, but a sentence of death passed by it must be confirmed by the High Court.** District Court deals with civil cases.

(4) **Magistrates** are of three types **Table (2-1)**:
(1) Chief Judicial Magistrate
(2) First Class Judicial Magistrate
(3) Second Class Judicial Magistrate

Sessions judges and magistrates are appointed by the High Court.

According to section 25 BNSS (S.31, Cr.P.C.), when a person is convicted at one trial for two or more offences, twice the amount of punishment, which a Magistrate is authorized, can be passed.

Any sentence awarded by a Court may be enhanced or decreased by a higher Court.

The President of India has the power to grant pardons, remissions of punishments, and commutation of death sentence (Article 72 of the constitution). State government has power to suspend the execution of any sentence or to remit whole or any part of the punishment passed by a court of law S. 473 and S. 474 BNSS (S. 432 and 433, Cr.P.C.).

COGNIZABLE OFFENCE: It is an offence in which a police officer can arrest a person without warrant from the Magistrate, e.g., rape, murder, dowry death, rash or negligent act, etc. (S.2(g) BNSS). In such offences, the individual is sent by the police to the doctor for medical examination. In **non-cognizable offences,** the injured person may go direct to the doctor, or he may file an affidavit in the Court of a Magistrate who will send him to the doctor for examination.

According to section 4 of BNS (S. 53, I.P.C.) Punishments: The sentences authorized by law are:

(1) Death
(2) Imprisonment for life
(3) Imprisonment which is of two descriptions (a) rigorous, with hard labor and (b) simple
(4) Forfeiture of property
(5) Fine
(6) Community service

Capital Punishment (Death Penalty): The various methods of carrying out death

TABLE (2-1): Powers of Magistrates as per S. 23 BNSS (S.29, Cr.P.C.).

Class of Magistrate	*Imprisonment*	*Fine*	*Community service*
Chief Judicial Magistrate	**Up to 7 years**	**Unlimited**	**This is a type of punishment for certain minor offences under the BNS Act**
I Class Judicial Magistrate	**Up to 3 years**	**₹ 50,000**	**It means the work which the court may order a convict to perform as a form of punishment that benefits the community, for which he shall not be entitled to get remuneration**
II Class Judicial Magistrate	**Up to 1 year**	**₹ 10,000**	

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sentence are **hanging (in India)**, electrocution, shooting, gas chamber, lethal injection [sodium thiopental (unconsciousness), pancuronium bromide (paralytic, stops breathing) and potassium chloride (stops heart)], garrotting and guillotine (a method of decapitation).

SUBPOENA OR SUMMONS: Sections 63 to 71 of BNSS (S.61 to 69 of Cr.P.C.) deal with summons. **Subpoena (sub = under; poena = penalty) is a document compelling the attendance of a witness in a Court of law under penalty, on a particular day, time and place for the purpose of giving evidence. It may also require him to bring with him any books, documents or other things under his control, that he is bound by law to produce in evidence.** It is issued by the Court in writing, in duplicate, signed by the presiding officer of the Court and bears the seal of the Court. It is served on the witness by a police officer, or other public servant, by delivering to him one of the copies of the summons. The person should sign a receipt on the back of the other copy. If the person summoned is in the active service of the Government, the Court issuing the summons shall usually send it in duplicate to the head of the office in which such person is employed, and such head shall cause the summons to be served on such person, and shall return it to the Court under his signature with the endorsement required by that section **(S. 68 BNSS.)**. A summons must be obeyed, and the witness should produce documents if asked for **(S. 94 BNSS.)**. **The witness will be excused from attending the Court, if he has a valid and urgent reason.** If the witness fails to attend the Court: (1) In a **civil case,** he will be liable to pay damages. (2) In a **criminal case,** to fine or issuing a warrant for arrest **(S.206 to 209 BNS and S. 90 BNSS).**

Priority in Attending the Court

(1) Criminal courts have priority over civil courts. If a witness is summoned by two Courts on the same day, one of which is criminal and other civil, he should attend the Criminal Court and inform the Civil Court of his inability to attend, giving his reasons.

(2) Higher courts have priority over the lower. If summoned to two Courts on the same day, he must first attend the higher Court.

(3) If he is summoned from two Courts of same status, **he must attend the Court from where he received the summons first**, informing the other Court about it. He can attend the second Court after finishing his evidence in the first Court.

CONDUCT MONEY: It is the fee paid to a witness in civil cases at the time of serving the summons, to meet the expenses for attending a Court. If the fee is not paid, or if he feels that the amount is less, the doctor can bring this fact to the notice of the Judge before giving evidence in the Court. The Judge will decide the amount to be paid.

In criminal cases, no fee is paid to the witness at the time of serving the summons. He must attend the Court and give evidence; otherwise he will be charged with contempt of Court. However, in criminal cases conveyance charges and daily allowance can be claimed by the doctor according to the Government rules. **Contempt means wilful disregard or disobedience of court's order** or conduct which tends to bring the authority of the court and administration of law into disrepute.

MEDICAL EVIDENCE

Evidence means and includes: (1) **all statements including statements given electronically** which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, (2) **all documents including electronic or digital records** produced for inspection of the Court **(S. 2 BSA)**. There are two types of evidences.

TYPES

(1) Documentary evidence: Sections 56 to 92 of Bharatiya Sakshya Adhiniyam (61 to 90 of Indian Evidence Act, 1872), deal

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with documentary evidence. The contents of documents may be proved either by primary or by secondary evidence **(S. 56 BSA)**.

a. **Primary evidence** means the document itself produced for inspection of the Court **(S. 56 BSA)**.
b. **Secondary evidence** means and includes (a) Certified copies. (b) Copies made from the original by mechanical processes. (c) Copies made from or compared with the original. (d) Oral accounts of the contents of a document.

(2) Oral evidence

(a) Direct: Evidence of a fact which is actually in issue, e.g., an electric blanket that has caused injury, a prescription, or a consent form.

(b) Indirect or circumstantial: Evidence of a fact which is not actually in issue, but which is derived from the circumstances, e.g., in case of alleged murder of A by B at certain place on a particular day and time, the circumstantial evidence would be that C saw B with a knife on that day at that place, a few minutes before the murder.

(c) Hearsay: It is any statement made by any person other than the witness giving evidence in Court, which is presented in the Court in order to assert that the facts contained in the statement are true, e.g., A gives evidence in the witness box stating that B had informed him that he had seen C commit a crime. In such case direct evidence can be given only by B that he had seen C committing a crime.

DOCUMENTARY EVIDENCE: It is of three types.

(1) MEDICAL CERTIFICATES: They refer to ill-health, insanity, age, death, etc. They are accepted in a Court of law, only when they are issued by a qualified registered medical practitioner. In case of ill-health, the exact nature of ill-health should be stated. Examine and issue certificate for **not more than 15 days**. See patient again after 15 days and reissue. **Never give from back date**. Do not give fitness on advanced date or back date. Certificate must address a particular person, such as employer, head master, principal, etc. **Certificate is a legal document.** The signature or left thumb impression of the patient should be taken at the bottom of the certificate. **A medical practitioner is legally bound to give a death certificate, stating the cause of death without charging fee, if a person whom he has been attending during his last illness dies (Registration of Births and Deaths Act, 1970). Death certificate should not be issued by a doctor without inspecting the body himself,** and satisfying that the person is really dead. The certificate should not be delayed, even if the doctor's fees is not paid. **The certificate should not be given, if the doctor is not sure of the cause of death, or if there is the least suspicion of foul play. In such cases, the matter should be reported to the police.**

(2) MEDICOLEGAL REPORTS: They are reports prepared by a doctor usually in criminal cases, e.g., assault, rape, murder, etc. The examination of an injured person or a dead body is made, when there is a requisition from a police officer or Magistrate. **These reports consist of two parts: (1) the facts observed on examination, and (2) the opinion drawn from the facts.** These reports will be attached to the file relating to the case, and the file is produced in the Court. The report will be open to the scrutiny of the defense lawyer. **It will not be admitted as evidence, unless the doctor attends the Court and testifies to the facts under oath.** Great care should be taken in writing the reports to avoid any loose wording or careless statement. This gives a chance to the defense lawyer to use them to his own advantage. The report should give the date, time and place of examination and the name of police officer who identified the person or the dead body.

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Exaggerated terms, superlatives, etc., should not be used. **The opinion should be based on the facts observed by himself, and not on information obtained from other sources. In an injury case, if it is not possible to give an opinion immediately, the person should be kept under observation,** and necessary investigations should be done before giving the report. The doctor should sign or initial at the bottom of each page, if the report exceeds one page in length. **The report should be written in duplicate using carbon papers.** The first copy is sent to the investigating officer in a sealed cover and another copy retained for future reference. Clothing, weapons, etc., sent for medical examination should be described in detail, sealed and returned to the police, after obtaining a receipt.

(3) DYING DECLARATION (S. 26 BSA; S.32, I.E.A.): It is a written or oral statement of a person, who is dying as a result of some unlawful act, relating to the material facts of cause of his death or bearing on the circumstances. If there is time, Executive Magistrate should be called to record the declaration. Before recording the statement, the **doctor should certify that the person is conscious and his mental faculties are normal *(compos mentis)*. If the condition of the victim is serious,** and there is no time to call a Magistrate, **the doctor should take the declaration in the presence of two witnesses.** The statement can also be recorded by the village headman, police or any other person, but its evidential value is less. **While recording the dying declaration, oath is not administered, because of the belief that the dying person tells the truth.**

Statement of dying declaration should be recorded in the man's own words, without any alteration of terms or phrases. Leading questions should not be put. The declarant should be permitted to give his statement **without any undue influence, outside prompting or assistance.** If a point is not clear, question may be asked to make it clear, but the actual question and the answer received should be recorded. **It should then be read over to the declarant, and his signature or thumb impression is taken.** The doctor and the witness should also sign the declaration. If the statement is written by the declarant himself, it should be signed by him, the doctor and the witnesses. **The statement made must be of fact and not of opinion.** If the declaration is made in the form of an opinion or conclusion, questions should be asked by the recorder to bring out the facts that are the basis for the conclusion. While recording the statement, if the declarant becomes unconscious, the person recording it must record as much information as he has obtained and sign it. **If the dying person is unable to speak but is able to make signs in answer to questions put to him, this can be recorded and it is considered as a "verbal statement".**

Admissibility: The declaration is admissible not only against an accused who killed the declarant, but also against all other persons involved in the same incident which resulted in his death. In India, if the declarant is in a sound state of mind at the time of making the declaration, **it is admissible in Court as evidence, even if the declarant was not under expectation of death at that time.** The statement is important to identify the offender or to clear innocent persons. The declaration is sent to the Magistrate in a sealed cover. **It is produced at the trial and accepted as evidence in case of death of the victim in all criminal and civil cases, where the cause of death is under enquiry.** The person recording the declaration will have to give evidence in the Court to prove it. **If the declarant survives, the declaration is not admitted but has corroborative value, and the person is called to give oral evidence.**

DYING DEPOSITION: It is a statement of a person on oath, recorded by the Magistrate, in the presence of the accused or his lawyer, who is allowed to cross-examine the witness. This procedure is not followed in India.

ORAL EVIDENCE: It includes all statements which the Court permits, or which are required to be made before it by the witness, in relation

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to matters of fact under enquiry. According to **S. 54 BSA** All proof of facts given orally is oral evidence. **In all cases, oral evidence must be direct. It must be evidence of a person who saw, heard, or perceived it by that sense or in that manner.** If it refers to an opinion or to the grounds on which the opinion is held, it must be the evidence of the person who holds that opinion on those grounds **(S. 55 BSA). A deaf and mute witness may testify by signs, by writing, or through an interpreter.** If oral evidence refers to any material thing, the Court may require the production of such a thing for its inspection, e.g., a bloodstained weapon or article of clothing, a portion of eliminated poison, etc. **(S. 55 BSA)**.

Oral evidence is more important than documentary evidence, as it admits cross-examination. Documentary evidence is accepted by the Court only after oral evidence by the person concerned.

Exceptions to Oral Evidence

(1) Dying declaration (S.26 and S.160 BSA; S. 32 and 157, I.E.A.**)**
(2) Expert opinion expressed in a treatise (S. 55 BSA; S.60, I.E.A.**)**
(3) Evidence of a doctor recorded in a lower Court
(4) Evidence given by a witness in a previous judicial proceeding
(5) Evidence of Mint Officers
(6) Reports of certain Government scientific experts:
- **(a) Chemical Examiner**
- **(b) Chief Inspector of Explosives**
- **(c) Director Fingerprint Bureau**
- **(d) Director, Haffkine Institute, Mumbai**
- **(e) Director, Central Forensic Science Laboratories or State Forensic Science Laboratories**
- **(f) Serologist to the Government of India.**

The Court has the power to summon and examine any such expert. The prosecution and defense have also a right to demand the Court to summon and examine any such expert.

(7) Public records: A record kept in a public office; e.g.: certificates of birth, death, marriage, etc.
(8) Hospital records: Routine entries, such as dates of admission and discharge, pulse, temperature, treatment given, etc., are admissible without oral evidence, but the cause of the disease or diagnosis are not accepted without oral testimony.

Chain of Custody of Evidence: It is a method to verify the actual possession of an object from the time it was first identified until it is offered into evidence in the Court room. Each specimen when obtained, should be labeled with the victim's name, the time and date, the nature of the specimen, identification number, and signed by the doctor. This information must be documented each time the material is handled by another person, and that person must give receipt for the material and will be included in the chain of custody. **The evidence must not be damaged, contaminated, or altered in any significant way.** The shorter the chain the better.

WITNESSES: A witness is a person who gives evidence regarding facts.

Two Types: (1) Common witness and (2) Expert witness

(1) COMMON WITNESS is a person who gives evidence about the facts observed or perceived by him. He must show that he was capable of perceiving the fact by one of his own senses, and that he actually observed this fact. This principle is commonly known as the **"first-hand knowledge rule"**, which may be used to establish the exact circumstances of the case for the Court, e.g., A has seen B and C fighting with sticks on a certain road on particular day and time. In a case of traffic accident, the person who witnessed the accident becomes a common witness.

(2) EXPERT WITNESS is a person who has been trained or is skilled or has knowledge, experience or education in technical or scientific subject, and capable of drawing

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opinions and conclusions from the facts observed by himself, or noticed by others, e.g., **doctor, firearm expert, fingerprint expert, handwriting expert, etc. (S. 39(1) BSA).**

An expert witness may give his opinion (1) upon facts which are either admitted, or proved by himself or other witnesses at the trial, (2) on matters of common knowledge, and (3) on hypothetical questions (questions based on stated assumptions), based thereon. The answer should be given only after completely understanding the question. **The main obligation of an expert is to point out professional facts. But, he may be asked to give professional estimate, which his observations seem to justify,** e.g., whether or not an injury is caused in the manner alleged or from the causes assumed; the possible consequences; the reasonable estimate of damages, etc. **The opinion on a key question must be given in a guarded manner using terms, such as that the findings are "consistent with" an alleged form of trauma**, such as a fall against a hard object, or with the striking of the head with a blunt instrument of a particular type. It does not exclude other mechanisms which could reasonably or possibly have caused the same findings. **The doctor cannot change his opinion while giving evidence in a court, but he can indicate other possibilities**. Conclusions must be based on facts. **Conclusions are much more important than opinions**. The expert opinions based upon objective, indisputable facts, help to evaluate the reliability and credibility of other witnesses. **The expert evidence is of little value when there is a conflict of opinion between experts**. In such cases, the Courts usually accept that opinion which is not in conflict with direct evidence. **An expert witness may refer to books to refresh his memory, or to correct or confirm his opinion (S. 162 BSA)**. Books as such are not evidence, but if **an expert refers to specific passages as representing his views, they may be taken down as his own evidence**. A witness may adopt the views of any authority as his own, provided he has an honest belief in them. **The opinion of an expert can be proved false by standard books on the subject**.

A doctor can be both a common and expert witness. When he describes the wounds on the body, he acts as a common witness. But when he says that the wounds were antemortem or postmortem, or they were suicidal, homicidal or accidental, or gives opinion regarding the cause of death, he acts as an expert witness.

HOSTILE WITNESS is person who is supposed to have some interest or motive for concealing part of the truth, or for giving completely false evidence. The Court will declare a witness as hostile (adverse) on the suggestion of the lawyer of the party who has summoned the witness or prosecution lawyer. **On declaration of a witness as hostile, he can be cross-examined by the same-side lawyer.** Any of the above two types of witnesses can be hostile.

PERJURY: Perjury means wilful giving of false evidence by a witness while under oath, or failure to tell what he knows or believes to be true (S. 227 BNS; IPC 191**).** It occurs if the person's earlier statement regarding the facts on oath and subsequent statement also must be on oath and both statements are opposed to each other and they cannot be reconciled. **The witness is liable to be prosecuted for perjury, and the imprisonment may extend to 7 years, and shall also be liable to fine which may extend to ten thousand rupees (S. 229 BNS).**

RECORD OF EVIDENCE

The evidence of the witness is recorded in the following order **(S.140 to S. 168 BSA)**.

1. **OATH (S. 2(23) BNS)**
2. **EXAMINATION IN CHIEF (S. 142, 143 BSA)**
3. **CROSS EXAMINATION (S. 142, 143,144, 148, 149 BSA)**
4. **RE-EXAMINATION (S. 142, 143 BSA)**
5. **COURT QUESTIONS (S. 168 BSA)**

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(1) OATH (S. 2(23) BNS): The witness has to take an oath in the witness box before he gives his evidence. He should take the oath as follows: "**I do swear in the name of God,** that what I shall state, shall be the truth, the whole truth, and nothing but the truth". If the witness is an **atheist, he has to solemnly affirm** instead of swearing in the name of God. **Oath is a declaration required by the law, which is compulsory and holds the witness responsible for consequences of his evidence. Refusal to take oath is punishable with imprisonment up to 6 months or fine. A child below 12 years is not required to take an oath.**

(2) EXAMINATION-IN-CHIEF (direct examination) (S. 142, 143 BSA): This is the first examination of a witness. **It consists of questions put to him by the lawyer (counsel or advocate) for the side which has summoned him. In criminal acts committed by an individual or group, the State becomes a party instead of the aggrieved person, and starts criminal prosecution, which is titled as "State versus A". In a criminal trial, the burden to prove is always on the prosecution, and the accused is presumed to be innocent till the contrary is proved against him. In Government prosecution cases, the public prosecutor first examines the witness.** If witness is called by private party, he is first examined by the lawyer of that party. The **object is to elicit all relevant medical facts and the conclusions which the doctor has drawn from these facts.** Before giving evidence, it is advisable that the doctor meets the public prosecutor and discusses the previously prepared report, the certificate of death, photographs, etc., that the witness intends to show in the Court, and an outline or pattern should be worked out for the best way to elicit his testimony. **The doctor should help the prosecutor in framing proper questions in proper sequence, so that all essential facts are elicited.** If the witness intends to modify any of his conclusions, these should be pointed out to the lawyer. The lawyer will be able to advise the witness about the anticipated questions in cross-examination.

Leading questions are not allowed except in those cases, where the Judge is satisfied that a witness is hostile (S. 146 BSA).

Leading questions: A leading question is one which suggests to the witness the answer desired, or which includes the answer implied in the question itself and admits of a conclusive answer by "Yes" or "No". "Was the length of cut 3 cm?". "Was it on the front of the abdomen?". "Was the injury caused by a sharp weapon?". They are all leading questions, as they suggest the answer "Yes" or "No". The proper questions should be: What was the length of the cut? Where was it seen? "What type of weapon would cause this injury?".

In examination-in-chief, the method of examination is by question and answer. The questions are usually short and demand some specific fact and short answer. But the answer can be given in narrative form, if it would be more informative and convincing. **The effect of the questions and answers is recorded indirectly, and not in the form of the question and answer.**

(3) CROSS-EXAMINATION (S. 142, 143,144, 148 and 149 BSA): In this, **the witness is questioned by the lawyer for the opposite party, i.e., lawyer for the accused (defense lawyer). In a murder trial, the defense witness is cross-examined by public prosecutor.**

The main objects are: (1) to elicit facts favourable to his case, (2) to test the accuracy of the statements made by the witness, (3) to modify, or explain what has been said, (4) to develop new or old facts, (5) to remove any undue or excessive emphasis which may have been given to any of them, and (6) to discredit the witness. In doing this, the **lawyer may try to weaken the evidence by showing that the evidence given is inaccurate, inconsistent, ill-founded, contradictory, and untrustworthy.**

The cross-examination need not be limited to the facts to which the witness testified in his examination-in-chief. The competence and credibility of the witness is tested by questioning his qualifications,

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experience and the number of cases of the kind under consideration he has personally observed, and by testing his memory or power of observation. When material is available, the lawyer may attack the character of the witness. The witness may be asked questions on his bias or impartiality, his previous conviction, his reputation for untruthfulness, and on any handicap he may have, which would affect the reliability of his evidence. The Court will decide whether the witness should answer any particular question, when asked for a ruling. **The Judge can always disallow irrelevant questions.** The Court also has the power to disallow questions which are intended to insult or harass or offensive in form; but if they are relevant to the facts in issue, the Court cannot disallow them. **The witness has to answer any question relevant to the matter in issue, even though the answer will expose or prove his guilt directly or indirectly,** e.g., which would reveal that he has committed an illegal operation. If the question is not understood, the witness should ask the lawyer to explain it better. **Answers favorable to the defense side should be given as promptly as those given on examination-in-chief. Leading questions are permissible during cross-examination. Cross-examination has no time limit,** and may last for hours or even days. Sometimes, cross-examination may act as a double-edged sword, i.e., it may damage the defense as much as the prosecution, especially if lawyer is not familiar with the subject, and the witness is efficient and honest.

(4) RE-EXAMINATION (Re-direct examination) (S. 142, 143 BSA): This is conducted by the lawyer for the side which has called the witness. **The object is to correct any mistake or to clarify or to add details to the statements the witness has made in cross-examination.** It is an opportunity for the witness to explain more fully some answers which might appear damaging to his direct evidence, because of skilful questioning or tactics by the cross-examiner. **The witness should not bring in any new subject at this stage.** The opposing lawyer has right of cross-examination on the new point raised. **Leading questions are not allowed.**

(5) Questions by Judge (S. 168 BSA): The Judge may ask any question at any stage of the examination to clear up doubts. The Court is also empowered to recall and re-examine any witness already examined, if his evidence appears to the Court to be essential to the just decision of the Court.

The deposition of the witness is handed over to him. The witness after carefully going through it, is required to sign at the bottom of each page, and on the last page immediately below the last paragraph, and to initial any corrections. The witness should not leave the Court without taking permission of the Judge.

CONDUCT AND DUTIES OF THE DOCTOR IN THE WITNESS BOX

The following rules help a doctor in the witness box. (1) Be well prepared with the details of your evidence. (2) Take all records, relevant reports that may have to be quoted in the box, e.g., original notes, autopsy report, photographs, X-rays, toxicology and blood grouping reports. (3) Be well-dressed and modest. (4) Do not discuss the case with anyone in the Court, except the lawyer by whom you were asked to testify. (5) Stand up straight. (6) Be relaxed and calm and not frightened or nervous. (7) Be pleasant, polite and courteous to the lawyer. (8) Do not underestimate the medical knowledge of the lawyers. (9) Never attempt to memorize. The law allows to refresh your memory from copies of reports already submitted. (10) Listen carefully to the questions. Answer should be brief and precise and in the form of "Yes" or "No". The witness is not bound to answer yes or no, but may qualify his answer if it is necessary for accuracy and completeness. Answer only what is asked. (11) Do not fumble in referring to case notes, records, etc. (12) Avoid difference between your record and your testimony. (13) Speak slowly, distinctly and audibly to enable the Judge to record your evidence. Look people in the eye when you speak, it gives the impression of honesty. (14) Speak with assurance. Be confident but not overconfident or arrogant. (15) Use simple language, avoiding technical terms to the best of your ability. (16) Avoid superlatives and exaggerations, e.g., very large bruise, frightful injury, savage blow, most agonizing pain, etc. (17) Address the Judge by his proper title, such as "sir" or "your honour". (18) Do not avoid a question.

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Say I do not know, if it is so, for no one can be expected to know everything. It indicates honesty. (19) Retain independence of your mind. Be honest, impartial, unbiased and truthful. Be frank to admit any points in favor of accused if that is the truth. (20) Never become hostile, angry, rude, or sarcastic during questioning. (21) Do not lose your temper. An angry witness is often a poor witness. Do not argue, just disagree if you do not agree; disagree firmly and repeatedly. (22) Do not over-emphasize replies to questions from the cross-examining lawyer. (23) Watch for double question and questions that include an assumption of facts which have not been proved. The answer to each part of the double question may be different. This should be made clear by the witness. (24) Express an opinion from your own knowledge and experience. Be prepared to give reasons for your opinion if asked. (25) Statements contained in older editions of textbooks need not be accepted as the medicine advances. Avoid speaking on a subject in which you have little or no practical experience. (26) A medical witness has no professional privilege, and therefore, he must answer any question. (27) Volunteering of information: Information should not be volunteered beyond that asked for in the question. The answer should also not extend beyond the expert's knowledge. Volunteered information is often not well prepared and is liable to cross-examination. As an expert witness, a medical practitioner may volunteer a statement, if he thinks that injustice will result if he fails to make the statement.

MEDICOLEGAL MASQUERADES: Many cases of homicide go undetected because of the lack of suspicion and improper or inadequate investigation. **All cases of death should be regarded as unnatural, until proved otherwise. Violent deaths** may show minimal or no external evidence of injury, and conversely natural deaths can occur under such circumstances as to suggest falsely that violence was used. Accidental deaths and suicides can occur under circumstances which suggest homicide. **In a suicide case,** alterations may be made at the scene because of stigma. In a homicide case, the scene may be altered or rigged to suggest that death resulted from suicide or accident. The doctor must look for any possible inconsistencies between the apparent death scene and his actual scientific findings. In a case of hanging, the manner in which a ligature is applied to the neck, or the mode of suspension of a body may be determining features in the circumstances. In such cases, the real cause of death can be established by complete autopsy and police investigation.

INVESTIGATION OF THE SCENE OF DEATH

BASIC RULES: The basic rules for investigation of any scene of crime are: (1) verify that a crime has been committed, (2) look for signs of how it was committed, and (3) recover and preserve evidence that might lead to the arrest and conviction of the guilty.

THE DEAD DO TELL TALES

The answers to the following questions have to be found: (1) Who is the victim? (identification). (2) When the death and injuries occurred? (time of death and injuries). (3) Where the death occurred? (scene and circumstances of death). (4) What injuries are present? (description of injuries). (5) Which injuries are significant? (major, minor, true, artefacts, postmortem injuries). (6) Why and how injuries were produced? (mechanism and manner of death, i.e., natural, accidental, suicidal or homicidal). If unnatural, determine the means or agent causing death, e.g., knife, firearm, poison, etc. and if homicide assist in identifying the person responsible for death.

CONDUCT AND DUTIES OF THE DOCTOR AT THE SCENE OF CRIME: Complete and accurate recording of the scene as it was found is very important. This can be done by accurate diagrams, notes and photography. The scene may show evidence of a struggle, and on the body vital trace evidence may be present. The examination at the scene should be limited to a search for such evidence which might be dislodged or possibly lost during the transfer of the body to the mortuary.

(1) If the victim of an assault is living when first seen, the doctor must do everything to save the life. (2) If death is imminent, he should obtain a dying declaration. (3) Retain any material which is relevant, e.g., in cases of suspected poisoning, he must retain vomit, left-over poison, drinking utensils, etc. (4) He must make sure that death has occurred. (5) If he suspects foul play, the police should be informed. (6) He must obtain all possible information regarding the crime. (7) He must identify the body, which should also be identified by the relatives and the police. (8) He must enquire whether the body has been moved at all before

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he first saw it. (9) He should ask the investigating officer before moving anything. Photograph the scene from several angles. He should follow but not lead the police around the scene. (10) He should not give opinion without proper thought. (11) He should make adequate notes: (a) Date, time, address or location. (b) Name and sex of deceased. (c) A list of all persons present. (d) General observation about the scene; any evidence of struggle, such as overturned furniture or trampled ground. Note surroundings of the body, such as walls, flooring, fixtures, furniture, doors and windows. If outside, record the type of weather, the state of ground and the vegetation present. (e) Temperature of the surroundings, and the rectal temperature of the deceased should be taken. (f) Make a sketch noting such points of importance as direction and position of blood (pools or splashes), position of the body and any weapons. The distribution of blood stains and their shape which may point to the site of injury should be noted. Note the amount of bleeding at the scene. Describe the clothing and note any tears, cuts, missing buttons, etc. If the weapon is in the hand of the deceased, note whether it is loosely held or tightly grasped. Examine the hands and forearms for defense wounds. Make note of injuries and record them on body diagrams. (g) Position and appearance of the body, rigor mortis, postmortem lividity, etc., which assist in estimating the time of death. (h) Free hair, fibers or other foreign matter which is likely to be dislodged when the body is moved, should be searched and removed with adhesive tape. (i) If there are any bite marks, they should be swabbed with a cotton wool swab moistened with saline. (j) The pubic hair should be combed in situ in cases of sexual assault, and loose hair collected. (k) Examine the objects on premises, e.g., dates on mail and newspapers, condition of food on table, etc., to determine the time of death. (l) Photograph any ligature before removal, cut if necessary leaving the knot or knots intact. (m) If a weapon is found, handle it with care to preserve fingerprints, blood stains, hair, fibers, etc. (n) Leave firearms in the condition they are found. (o) Note position of each bullet and casing. Bullets, etc., should be marked for identification. (12) Do not touch anything, especially a possible weapon. (13) Do not smoke or throw cigarette stubs, matches, etc., as trace evidence including small items discarded by a suspect, may be important in the proof of the crime. (14) The scene should be examined by fingerprint examiner, followed by a trace evidence specialist. (15) Transfer the body to the mortuary wrapped in a large sheet of plastic or clean cloth.

DISADVANTAGES of the doctor not visiting the scene are: (1) When the body is transferred to mortuary, fresh abrasions may be produced on it during transit. (2) Clothing will be disarranged, blood stains will form on parts of clothes originally free from them. (3) Fresh tears in clothes may be produced by rough handling. (4) Existing rigor mortis may be broken down at least partially.

BASIC RULES FOR PRESERVATION OF MEDICO-LEGAL EVIDENCE: For evidence to be legally accepted by the Courts: (1) It must be obtained in a legal manner. (2) It must be relevant to the issue. (3) The chain of custody of the item must be intact and known. (4) It must be evaluated by the qualified experts.

COLLECTION OF EVIDENCE: COLLECT: (1) Every article even remotely likely to be helpful in the investigation. (2) Any item likely to carry fingerprints. (3) Use separate container for each item. (4) Every article collected must bear identifying marks either (a) direct, in which marks are put on the item of evidence itself, or (b) indirect, in which notations of identification are placed on a container in which the evidence is placed.

PROCEDURE OF CRIMINAL TRIAL

The proceedings of investigations by the police in criminal offences are sent to the Judicial Magistrate of the area. **All offences punishable with death, imprisonment for life, or for a term exceeding 2 years are tried as warrant cases. All other cases are tried as summons cases (non-cognizable offences).**

SESSIONS TRIAL: In cases submitted by the police, when the accused is brought before the Court, the Magistrate must first make sure that the accused has received all the required documents. The Magistrate considers the documents, examines the accused, and hears the prosecution and defense. If he finds the charge groundless, he records his reasons and discharges the accused. **If the Magistrate is of the opinion that the accused should be committed to trial by Sessions Court, he frames a charge of the offence, which is read and explained to the accused, and makes an order committing the accused to trial by the Court of Sessions,** and records briefly the reasons for such commitment. **A warrant is issued to keep the accused in custody.** The Magistrate sends the charge, the record of enquiry and any weapon or other

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thing which is to be produced in evidence, to the Court of Sessions. At the first hearing, the public prosecutor opens the case by describing the charge against the accused and stating the evidence by which he proposes to prove the accused guilty of the offence charged. After going through the record, and hearing the submissions of the defense and the prosecution, if the Judge considers that there is no sufficient ground for proceeding against the accused, he discharges him recording his reasons for doing so. Otherwise, the **Judge frames a charge, which is read out and explained to the accused,** and his plea is recorded. If he pleads guilty, he may be convicted, otherwise a date is fixed for hearing. **The prosecution witnesses are called.** Each witness is examined by the prosecutor, and may be cross-examined by the defense, and re-examined by the prosecution, as well as questioned by the Court. If, after hearing the prosecution evidence, examining the accused, hearing the prosecution and the defense, the Judge considers that there is no evidence that the accused committed the offence, he passes an order of acquittal. If the accused is not acquitted, he is asked to defend himself. Any written statement submitted by the accused is filed with the record. **The defense witnesses are then called.** Each witness is examined by the defense lawyer, and may be cross-examined by the prosecutor and re-examined by the defense, and may be questioned by the Judge. The evidence of all the witnesses is recorded in writing either by the Judge himself or by his dictation in open Court. At the conclusion of the evidence, the prosecution sums up the case and the accused or his lawyer is entitled to reply and the prosecutor may enter his submissions if permitted by the Judge. If the accused is found guilty he is convicted, otherwise he is acquitted. **Both the prosecution and defense can appeal to the High Court against an acquittal or conviction.** When the Court of Sessions passes the sentence of death, the proceedings are submitted to the High Court for confirmation of the sentence.

Important Points for MCQ's

1. Minimum rank of the police officer to conduct inquest—**Usually Sub-Inspector but not below the rank of head constable.**
2. **Police inquest—BNS 194**
3. **Magistrate inquest—BNS 196**
4. **Summons** is a document compelling the attendance of a witness in a Court of law under penalty, on a particular day, time and place for the purpose of giving evidence.
5. **Leading questions are not allowed during Examination in chief** (except in those cases, where the Judge is satisfied that a witness is hostile).

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